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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,967	03/22/2004	Dennis Colleran	65677-P004US-10403105	2753
29053	7590	12/14/2005		
DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P. 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784				
			EXAMINER REIMERS, ANNETTE R	
			ART UNIT 3733	PAPER NUMBER

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/805,967	Applicant(s) COLLERAN ET AL.	
	Examiner Annette R. Reimers	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/22/04, 4/12/04, 6/14/04, 7/23/04, 8/30/04, 10/17/05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

The specification is objected to as failing to comply with 37 CFR 1.84(p)(5), which states: "Reference characters not mentioned in the description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings." Reference number 5 of figure 6 is not mentioned in the detailed description. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7 and 10-34 is rejected under 35 U.S.C. 102(e) as being anticipated by Jackson (US Patent Number 6,726,689).

Jackson discloses various embodiments of a medical implant device, 8, comprising a receiver member, 10, including a plurality of wall sections defining a longitudinal bore, wherein the wall sections have an inner threaded portion and a closure member, 11, including a substantially cylindrical body having a longitudinal axis and an outer threaded portion for threaded engagement with the inner threaded portion

of the receiver member, wherein the outer threaded portion includes a trailing edge having at least one point crestward of the trailing edge's root that is rearward of the trailing edge's root relative to a direction of advancement when the closure member is being inserted into the receiver member, and wherein the trailing edge's crest is no further rearward than a horizontal axis that is perpendicular with its root (see figures 3-10).

In addition, the outer threaded portion includes a leading edge having at least one point crestward of the leading edge's root that is forward of the leading edge's root relative to the direction of advancement when the closure member is being inserted into the receiver member and wherein said leading edge's crest is no further forward than a horizontal axis that is perpendicular with its root (see figures 4-10).

The receiver member also includes a transverse channel substantially perpendicular to the bore and is a part of a bone fixation device (see figure 3). The bone fixation device is a bone screw or hook (see figure 3 and column 3, line 61). The closure member is capable of being a setscrew (see column 10, lines 33-35). The outer threaded portion defines a dovetail when viewed in section (see figure 11).

The outer threaded portion is configured as a helical spiral about the body, and wherein the thickness of the outer threaded portion at its crest varies along the helical spiral (see figures 4-10). In addition, the outer threaded portion is configured as a helical spiral about the body, wherein the thickness of the outer threaded portion at its root varies along the helical spiral (see figures 4-10). Furthermore, the outer threaded portion is configured as a helical spiral about the body, wherein a peak thickness of the

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outer threaded portion occurs crestward of the outer threaded portion's root, and wherein the thickness of the peak thickness varies along the helical spiral (see figures 4-10). Moreover, the thickness of the peak thickness is thicker at a rearward portion of the helical spiral than at a forward portion of the helical spiral relative to the direction of advancement of the closure member when being inserted into the receiving member (see figures 4-10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (US Patent Number 6,726,689).

Jackson discloses the claimed invention except for the measured angle between the leading and trailing edges being between about 2 degrees and 40 degrees, and the measured angle being about 15 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Jackson with the measured angle between the leading and trailing edges being between about 2 degrees and 40 degrees and the measured angle being about 15 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
PRIMARY EXAMINER